



COPY

Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

CIVIL RIGHTS DIVISION
Litigation Section

June 9, 2009

Jeanne M. Galvin
Assistant Attorney General
1275 W. Washington
Phoenix, AZ 85007

Re: Arizona Board of Appraisal
Letter of Concern
File No. P0072008000058

Dear Ms. Galvin:

As you know, this office received a complaint against the Arizona Board of Appraisal ("ABOA") for alleged violation of Arizona's Open Meeting Law, A.R.S. § 38-431, *et seq* ("OML"). We have concluded our investigation and our findings are outlined in this Letter of Concern.

1. Evidence of Potential Violation of OML Through Non-Public Meetings.

A.R.S. § 38-431.01(A) states: "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting." All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters which may foreseeably require final action or a final decision by the body constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the OML. *Id.*; A.R.S. § 38-431(3); Ariz. Att'y Gen. Ops. 75-8, 179-4.

Discussions and deliberations between less than a majority of the members of a governing body, or other devices, when used to circumvent the purposes of the OML violate that law. *See* Ariz. Att'y Gen. Op. 75-8; *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Thus, public officials may not circumvent public discussions by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision. Such activities when engaged in by public officials may undermine public confidence in the public decision making process established in the OML by apparently removing discussions and decisions from public view.

Our investigation revealed that former ABOA Board Member Charles Havranek "polled" other members of the Board outside of public meetings or executive sessions regarding the following topics which foreseeably might come before the Board for final action or final decision: (1) the desire to remove the Board's legal advisor in July 2002; and (2) willingness to waive travel claims for budgetary reasons in 2003. Due to passage of substantial time since the alleged OML violations and the death and/or unavailability of certain key witnesses, our investigation did not determine whether a majority of Board members were polled on these topics.

2. Other Alleged OML Violations.

The complaint suggested that various other OML violations occurred regarding the Board's refusal to allow its Executive Director to attend an executive session regarding his employment despite notice, a Board member's possible conspiracy to eliminate competition, contact by Board members and non members regarding various issues addressed by the Board, and potential disclosure by Board members of information from executive sessions. The investigation did not confirm OML violations regarding those allegations.

3. Letter of Concern and Recommendations.

This letter of concern is being issued due to the past non-public polling of ABOA members discussed in Section 1 above, the importance of ensuring that current ABOA members adhere to the OML and preserve the public trust in carrying out their important functions in licensing and regulating appraisers, and to resolve concerns raised in this OML complaint. Please share its contents with ABOA at its next regular Board meeting.

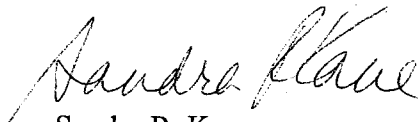
Additionally, to avoid OML violations by ABOA members in the future, it is requested: (1) that all current members of ABOA receive a minimum of 1½ hours of training in the OML within 120 days of the date of this letter, with emphasis on avoiding communication with other Board members outside of public meetings and executive sessions regarding matters that may come before the Board and limiting the scope of discussion at executive committee and public meetings to agenda items; (2) that ABOA adopt policies and procedures for adhering to the OML and avoiding direct or indirect communications among Board members regarding matters which may subsequently come before the Board; and (3) that certification regarding compliance with items 1 and 3, including the names of attendees, training date(s), and copies of new policies and procedures, be provided to me within 180 days of the date of this letter..

Please confirm that the Board accepts these recommendations by having this letter countersigned by a duly authorized representative of the Board by June 23, 2009.

Jeanne M. Galvin
Assistant Attorney General
June 9, 2009
Page Three

Should you have any questions relating to this investigation, feel free to contact me. Thanks for your cooperation.

Sincerely,


Sandra R. Kane
Assistant Attorney General

The recommendations contained in this letter are accepted by the Arizona Board of Appraisal.

ARIZONA BOARD OF APPRAISAL

6/18/09
Date

By Debra G. Pearson

Its Executive Director

#481728